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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,791	09/29/2003	Steven D. Seip	47003-070002	2992

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EXAMINER	
CHEUNG, WILLIAM K	
ART UNIT	**PAPER NUMBER**
1713	

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/673,791	SEIP ET AL.	
	Examiner	Art Unit	
	William K Cheung	1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 12-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 12-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. In view of Amendment filed December 13, 2004, claims 7-11 have been cancelled. Claims 1-6, 12-24 are pending.

2. In view of Amendment filed December 13, 2004, the objection of claims 1, 3, 12, 13, 17, 18, 21, 22 due to minor informalities is withdrawn.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 5, 14, 15, 19, 20, 23, 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited "thiosynergist" is not defined in the specification. Although the word means something that has synergy effect with sulfur, the recitation does not specify what type of synergy is there. What is "thiosynergist"?

Applicant's arguments filed December 13, 2004 have been fully considered but they are not persuasive. Applicants have submitted trade literature and presentation to show the meaning of a "thiosynergist". However, the presented trade literature and presentation still fail to set the metes and bounds of the claims because applicants' specification fails to provide a sufficient definition of what is considered a "thiosynergist". Since applicants' specification fail to disclose what compounds are considered a "thiosynergist", the examiner has a reasonable basis to maintain the 112 rejection set forth.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-6, 12-24 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Betso et al. (US 5,925,703) for the reasons adequately set forth from paragraph 8 of non-final rejection of October 29, 2004.

Since applicants fail to disclose what a "thiosynergist" is, it is reasonable for the examiner to broadly interpret that the "thiosynergist" can be anything including, moisture or air that may be entrapped during the molding process for forming the articles or compositions.

Betso et al. (abstract; col. 9, line 55-60) disclose filled polymer compositions that are easily molded and have utility in household articles. Further, Betso et al. (col. 9, line 12-37) clearly disclose polypropylene copolymers comprising 1.5-7% of ethylene as a thermoplastic component of the filled polymer composition. Betso et al. (col. 6, line 1-

29) disclose that the filled composition comprising talc as a filler, and phenolic based antioxidants, phosphites. Since Betso et al. are silent on using a sodium containing additives in the disclosed composition, the examiner has a reasonable basis to believe that the claimed "essentially free of sodium containing additives" is inherently possessed in Betso et al.

Because it is well known in the art of polyolefin polymerization, polyolefins (fluff) are generally compounded with an acid neutralizer (such as calcium stearate) immediately after production to prevent the degradation from the residual catalyst from the polymerization process, the examiner has a reasonable basis to believe that the claimed acid scavenger (or calcium stearate) is inherently possessed in Betso et al.

Further, in view of the substantially identical composition disclosed in Betso et al. and the composition being claimed, the examiner has a reasonable basis to believe that the claimed intrinsic viscosity and the molecular of the xylene solubles, the crystallinity of the propylene homopolymer are inherently possessed in Betso et al. Since the PTO does not have proper means to conduct experiments, the burden of proof is now shifted to applicants to show otherwise. In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977); In re Fitzgerald, 205 USPQ 594 (CCPA 1980).

Applicant's arguments filed December 13, 2004 have been fully considered but they are not persuasive. Applicants argue that Table IX of applicants' specification

disclose propylene/ethylene impact copolymers having an ethylene content in the range of up to 15 percent, but not necessarily have a intrinsic viscosity and molecular weight recited in claims 1-6 and 21-24.

However, applicants' must recognize that the instant 102-3 rejection is set forth because in view of substantially identical composition of Betso et al. and applicants' claims 1-6, 21-24, the examiner has a reasonable basis to believe that the claimed intrinsic viscosity and the molecular of the xylene solubles, the crystallinity of the propylene homopolymer are inherently possessed in Betso et al. Furthermore, the basis for the instant 102-3 rejection is also affirmed by applicants' Table IX because some of the argued samples do possess the claimed intrinsic viscosity and the molecular of the xylene solubles, and the crystallinity of the propylene homopolymer.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims *5, 15, 19, 24* stand rejected under 35 U.S.C. 103(a) as being unpatentable over Betso et al. (US 5,925,703) which is affirmed by GE product trade literature on Ultranox 641 for the reasons adequately set forth from paragraph 10 of non-final office action of October 29, 2004.

Applicant's arguments filed December 13, 2004 have been fully considered but they are not persuasive. For the reasons adequately set forth from paragraph 7 of instant office action, the rejection of Claims 5, 15, 19, 24 under 35 U.S.C. 103(a) is proper.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William K. Cheung

Primary Examiner

January 3, 2005

WILLIAM K. CHEUNG
PRIMARY EXAMINER